

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
CHARTER COMMUNICATIONS	)	File Nos.
ENTERTAINMENT II, L.P.	)	CSB-A-0469
	)	CSB-A-0471
Appeals of Local Rate Orders of	)	CSB-A-0477
City of Azusa, CA (CUID 0668)	)	
City of Duarte, CA (CUID 1119)	)	
City of Norwalk, CA (CUID 0876)	)	

**CONSOLIDATED MEMORANDUM OPINION AND ORDER**

**Adopted: July 12, 2002**

**Released: July 15, 2002**

By the Acting Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Charter Communications Entertainment II, L.P. ("Charter"), the franchised cable operator serving Azusa, Duarte, and Norwalk, California ("Cities"), has appealed local rate orders adopted by the Cities on October 6, 1997,<sup>1</sup> October 14, 1997,<sup>2</sup> and November 18, 1997,<sup>3</sup> ("Rate Orders"), respectively. The Cities opposed each of the appeals, and Charter replied. Charter also petitioned for a stay of all the rate orders. The Cities opposed the petition, and Charter replied.<sup>4</sup> We are consolidating these appeals for administrative convenience in light of the common parties and related issues. Based upon our review of the record, we deny Charter's appeals of the Cities' Rate Orders.

**II. BACKGROUND**

2. The Communications Act provides that, where effective competition is absent, cable rates for the basic service tier ("BST") are subject to regulation by franchising authorities.<sup>5</sup> Rates for the BST should not exceed rates that would be charged by systems facing effective competition, as determined in accordance with Commission regulations for setting rates.<sup>6</sup>

<sup>1</sup> Azusa (Resolution No. 97-C140).

<sup>2</sup> Duarte (Resolution No. 97-40).

<sup>3</sup> Norwalk (Resolution No. 4546).

<sup>4</sup> In light of our action on the merits, we dismiss the stay requests as moot.

<sup>5</sup> 47 U.S.C. § 543(a)(2).

<sup>6</sup> 47 U.S.C. § 543(b)(1); 47 C.F.R. § 76.922.

3. Rate orders issued by franchising authorities may be appealed to the Commission pursuant to Commission rules.<sup>7</sup> In ruling on appeals of local rate orders, the Commission will not conduct a *de novo* review, but instead will sustain the franchising authority's decision as long as a reasonable basis for that decision exists.<sup>8</sup> The Commission will reverse a franchising authority's rate decision only if it determines that the franchising authority acted unreasonably in applying the Commission's rules. If the Commission reverses a franchising authority's decision, it will not substitute its own decision but instead will remand the issue to the franchising authority with instructions to resolve the case consistent with the Commission's decision on appeal.

### III. DISCUSSION

4. Charter filed a petition with the Commission on July 31, 1997, asserting that it was subject to local exchange carrier ("LEC") effective competition in Azusa, Duarte, and Norwalk, among others, from Pacific Bell Video Services, d/b/a Pacific Bell Digital TV, a digital wireless cable operator serving Los Angeles and Orange Counties, California. Azusa, Duarte, and others filed a joint opposition. Norwalk filed a rebuttal to one of Charter's supplemental filings.

5. Charter notified the local franchising authorities ("LFAs") for the Cities that it had filed a petition for effective competition seeking certification by the Commission that its cable systems were subject to effective competition, that its cable systems were no longer subject to rate regulation, and that it would be raising its BST. The Cities issued resolutions, which were subsequently adopted as rate orders in October, 1997, directing Charter to cease and desist from any unlawful rate increases, rescind any rate increases, and issue appropriate refunds. Charter filed separate rate appeals for each local rate order with the Commission based on the existence of effective competition in each of the Cities.

6. On April 17, 1998, the former Cable Services Bureau, now the Media Bureau, adopted a Memorandum Opinion and Order denying Charter's petition for effective competition for Azusa, Duarte, and Norwalk, California, among others.<sup>9</sup> Subsequently, the Commission affirmed the Cable Service Bureau's Order and denied Charter's application for review.<sup>10</sup>

7. Because Charter failed to show that its Azusa, Duarte, and Norwalk cable systems are subject to effective competition from a LEC, its BST rates remain subject to regulation by the LFAs in each city. Effective competition was Charter's only basis for the appeals of the rate orders.

### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that the Appeals of Local Rate Orders filed by Charter Communications Entertainment II, L.P., d/b/a Charter Communications for the City of Azusa, City of Duarte, and City of Norwalk, CA **ARE DENIED** and the Local Rate Orders **ARE REMANDED** to the Cities for further consideration consistent with this Consolidated Memorandum Opinion and Order.

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<sup>7</sup> 47 U.S.C. § 543(b)(5)(B); 47 C.F.R. § 76.944.

<sup>8</sup> *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5731-32 (1993) ("*Rate Order*"), 9 FCC Rcd 4316, 4346 (1994) ("*Third Reconsideration Order*").

<sup>9</sup> Charter Communications Entertainment II, L.P. and Long Beach Acquisition Corp., 13 FCC Rcd 8506 (1998).

<sup>10</sup> Marcus Cable Associates, L.P. 16 FCC Rcd 15612 (2001).

9. **IT IS FURTHER ORDERED** that the Requests for Emergency Stay by Charter Communications Entertainment II, L.P. **ARE DISMISSED** as moot.

10. This action is taken pursuant to authority delegated by § 0.283 of the Commission's rules. 47 C.F.R. § 0.283.

FEDERAL COMMUNICATIONS COMMISSION

Steve Broeckaert  
Acting Chief, Policy Division  
Media Bureau